

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

SENATE BILL

No. 232

Introduced by Senator Monning
(Coauthor: Senator Roth)
(Coauthor: Assembly Member Stone)

February 11, 2013

An act to amend ~~Section 1071 of the Labor Code, relating to employment. Sections 1450, 1451, 1452, 1453, 1454, and 1456 of the Military and Veterans Code, and to amend the Budget Act of 2013 (Chapter 20 of the Statutes of 2013) by repealing Item 8955-011-0001 of Section 2.00 of that act, relating to veterans, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 232, as amended, Monning. ~~Private employment: public transit employees. California Central Coast State Veterans Cemetery at Fort Ord Endowment Fund.~~

Existing law creates the California Central Coast State Veterans Cemetery at Fort Ord Endowment Fund (Endowment Fund) in the State Treasury, and requires moneys in the Endowment Fund to be allocated, upon appropriation by the Legislature, to the Department of Veterans Affairs for the annual administrative and oversight costs of the veterans cemetery, as specified, and to generate funding through interest for the veterans cemetery. Existing law requires moneys in the Endowment Fund to be invested to generate ongoing earnings to cover the estimated annual oversight and maintenance costs associated with the veterans cemetery, as provided.

This bill would instead require any moneys to be allocated to the department for the nonreimbursable costs of design and construction

and the annual operations and maintenance costs of the veterans cemetery for the next 10 years. This bill would allow, but not require, moneys in the fund to be invested to generate ongoing earnings to offset the estimated annual operations and maintenance costs associated with the veterans cemetery.

Existing law requires the department to develop and submit a State Veterans Cemetery Grant Program application to the United States Department of Veterans Affairs for the establishment of a veterans cemetery upon the Controller's determination that the Endowment Fund has adequate principal to yield sufficient investment earnings in each year for the next 10 years, from the date of the determination, to fully fund the respective year's administrative and oversight costs, and to fund the estimated costs of developing and submitting the application, as specified.

This bill would instead require the department to develop and submit an application upon the Controller's determination that the Endowment Fund has adequate amounts, in addition to funding the estimated costs of developing and submitting the application, to fully fund the nonreimbursable costs of design and construction and the operations and maintenance costs for the next 10 years. This bill would require the Controller to consider the estimated revenues from specified fees expected to be deposited into the Endowment Fund in making this determination.

This bill would allow any moneys, if awarded, received from the State Veterans Cemetery Grant Program to be used to reimburse the Endowment Fund for specified allowable costs as established by that program.

Existing law authorizes the Director of Finance to transfer up to \$1,500,000 as a loan from the General Fund to the Endowment Fund, and requires the loan to be repaid with interest, as provided.

This bill would repeal that authorization, and instead make an appropriation of \$1,000,000 from the General Fund to the Endowment Fund for the construction of the California Central Coast State Veterans Cemetery at Fort Ord.

This bill would make technical, conforming changes to change the references to "administrative and oversight" to "operations and maintenance."

~~Existing law requires a local government agency to give a 10% preference to any bidder on a service contract to provide public transit~~

~~services who agrees to retain employees of the prior contractor or subcontractor for a period of not less than 90 days, as specified.~~

~~This bill would expand these provisions to require a state agency to also give a 10% preference to any bidder under these provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1450 of the Military and Veterans Code*
2 *is amended to read:*

3 1450. For purposes of this chapter, the following definitions
4 apply:

5 ~~(a) “Administrative and oversight costs” means costs incurred~~
6 ~~by the department for the maintenance of the veterans cemetery~~
7 ~~including, but not limited to, personnel costs, the opening and~~
8 ~~closing of graves, the interment of remains, committal service~~
9 ~~coordination, grounds keeping, landscaping, general maintenance,~~
10 ~~and janitorial services.~~

11 ~~(b)~~

12 (a) “Department” means the Department of Veterans Affairs.

13 ~~(c)~~

14 (b) “Endowment Fund” means the California Central Coast
15 State Veterans Cemetery at Fort Ord Endowment Fund.

16 ~~(c) “Operations and maintenance costs” means costs incurred~~
17 ~~by the department for the operations and maintenance of the~~
18 ~~veterans cemetery including, but not limited to, personnel costs,~~
19 ~~the opening and closing of graves, the interment of remains,~~
20 ~~committal service coordination, grounds keeping, landscaping,~~
21 ~~general maintenance, and janitorial services.~~

22 (d) “Operations Fund” means the California Central Coast State
23 Veterans Cemetery at Fort Ord Operations Fund.

24 (e) “Phases” means the usual phases of a capital outlay project,
25 and includes studies, preliminary plans, working drawings,
26 including documents necessary to put the construction phase out
27 to bid, and construction.

28 (f) “Veterans cemetery” means the California Central Coast
29 State Veterans Cemetery at Fort Ord.

30 *SEC. 2. Section 1451 of the Military and Veterans Code is*
31 *amended to read:*

1 1451. (a) The California Central Coast State Veterans
2 Cemetery at Fort Ord Endowment Fund is hereby created in the
3 State Treasury. Moneys in the Endowment Fund shall be allocated,
4 upon appropriation by the Legislature, to the department for the
5 ~~annual administrative and oversight nonreimbursable costs of~~
6 ~~design and construction and the annual operations and~~
7 ~~maintenance costs of the veterans cemetery, pursuant to Sections~~
8 ~~1453 and 1454, and to generate funding through interest for the~~
9 ~~veterans cemetery cemetery for the next 10 years.~~

10 (b) ~~(1) Moneys in the fund shall first be invested with the goal~~
11 ~~of achieving capital appreciation to create a balance sufficient to~~
12 ~~generate ongoing earnings to cover the estimated annual oversight~~
13 ~~and maintenance costs associated with the veterans cemetery~~
14 ~~pursuant to Section 1453.~~

15 ~~(2) Upon the determination of the Controller that the Endowment~~
16 ~~Fund balance has attained the goal established in paragraph (1),~~
17 ~~moneys in the fund shall be invested to generate earnings to fund~~
18 ~~annual oversight and maintenance costs associated with the~~
19 ~~veterans cemetery.~~

20 ~~(b) Moneys in the fund may be invested to generate earnings to~~
21 ~~offset annual operations and maintenance costs associated with~~
22 ~~the veterans cemetery.~~

23 (c) (1) The Endowment Fund may consist of donations from
24 public and private entities, partnerships between public and private
25 entities, fees, cash advances, and transfers from the state General
26 Fund as may be specified by law.

27 (2) The department may enter into any financial agreement to
28 receive cash advances in the Endowment Fund, provided that the
29 agreement does not require the state to repay or make payments
30 on cash advances and the agreement is reviewed and approved by
31 the Department of Finance.

32 (d) To the extent possible, donations made in-kind to the
33 Endowment Fund shall be monetized so as to offset the ongoing
34 ~~administrative and oversight operations and maintenance costs~~
35 ~~under Sections 1452 and 1453.~~

36 (e) Earnings generated by the Endowment Fund shall be retained
37 by the fund.

38 (f) Moneys deposited in the Endowment Fund are exempt from
39 the requirements of Sections 11270 through 11277 of the
40 Government Code.

(g) Moneys in the Endowment Fund shall be invested by the Treasurer, after consultation with the department, in a manner that best meets the goals of the fund.

(h) If, through changes in state or federal law, additional revenues are identified for the ~~administration and oversight operations and maintenance~~ of the cemetery, including increases in federal burial allowances, so that the amount of annual revenue exceeds the annual ~~administrative and oversight operations and maintenance~~ costs, the excess revenues shall be deposited in the Endowment Fund.

SEC. 3. Section 1452 of the Military and Veterans Code is amended to read:

1452. (a) On or before July 1, ~~2007~~, 2014, and annually thereafter, the Controller, after consultation with the department, shall report to the Assembly and Senate Committees on Veterans Affairs, Monterey County, the City of Seaside, and the Fort Ord Reuse Authority on the status of the Endowment Fund, the amount of *any* interest and investment earnings generated by the Endowment Fund, and the estimated amount of ~~additional principal~~ needed to ~~generate annual interest revenue~~ that will sufficiently cover the estimated annual ~~administrative and oversight operations and maintenance~~ costs.

(b) The estimated annual ~~administrative and oversight operations and maintenance~~ costs shall be developed annually by the department and provided to the Controller for purposes of the report required by subdivision (a) by no later than June 15 of each year.

SEC. 4. Section 1453 of the Military and Veterans Code is amended to read:

1453. (a) (1) Upon the determination of the Controller, after consultation with the Secretary of Veterans Affairs, that the Endowment Fund has adequate ~~principal to yield sufficient investment earnings in each year for the next 10 years, from the date of the determination,~~ amounts to fully fund the ~~respective year's administrative and oversight costs, net of all other estimated revenue sources,~~ nonreimbursable costs of design and construction and the operations and maintenance costs for the next 10 years, and to fund the estimated costs of developing and submitting the State Veterans Cemetery Grant Program application, the department shall develop and submit a State Veterans Cemetery

1 Grant Program application to the United States Department of
2 Veterans Affairs for the establishment of a veterans cemetery. The
3 department shall consider cashflow needs when providing estimates
4 to the Controller in making this determination. *The Controller*
5 *shall consider the estimated revenues from the fees described in*
6 *Section 1455 expected to be deposited into the Endowment Fund*
7 *in making this determination.*

8 (2) The Controller, upon appropriation by the Legislature, shall
9 transfer moneys from the Endowment Fund to the Operations Fund
10 in an amount equal to the estimated costs of developing and
11 submitting the State Veterans Cemetery Grant Program application
12 to the United States Department of Veterans Affairs.

13 (3) Notwithstanding paragraph (1), the Controller, upon
14 appropriation by the Legislature, shall transfer funds from the
15 Endowment Fund to the Operations Fund in an amount at least
16 equal to the estimated costs to complete preliminary plans and
17 working drawings. Transfers shall be made only when sufficient
18 funds, as determined by the Director of Finance, exist to fully
19 accomplish each of these project phases.

20 (4) The department shall not proceed with advertisement for
21 construction bids until the Endowment Fund has adequate ~~principal~~
22 ~~amounts to cover annual administrative and oversight operations~~
23 ~~and maintenance~~ costs, in accordance with paragraph (1).

24 (b) (1) The Secretary of Veterans Affairs shall submit the State
25 Veterans Cemetery Grant Program application to the United States
26 Department of Veterans Affairs within six months of the
27 Controller's determination pursuant to subdivision (a). The
28 Secretary of Veterans Affairs is authorized to act as the official
29 representative of the state in connection with the State Veterans
30 Cemetery Grant Program application, including providing the
31 United States Department of Veterans Affairs throughout the
32 application process with all necessary assurances that additional
33 information shall be provided when required. The Secretary of
34 Veterans Affairs shall have final approval of all aspects of the
35 cemetery design and operation.

36 (2) Upon transfer of funds pursuant to paragraphs (2) and (3)
37 of subdivision (a), the department is authorized to proceed with
38 all activities necessary to support the submission of the State
39 Veterans Cemetery Grant Program application.

(3) Upon the United States Department of Veterans Affairs' certification of the grant award, the department is authorized to proceed with construction and equipping of the veterans cemetery.

(c) (1) If awarded, the moneys received from the State Veterans Cemetery Grant Program shall be used to reimburse the Endowment Fund for the *allowable costs as established by the United States Department of Veterans Affairs State Veterans Cemetery Grant Program* of developing and submitting the State Veterans Cemetery Grant Program application to the United States Department of Veterans Affairs and other eligible costs, and to fund 100 percent of costs allowed by the grant requirements, as well as the state's share of any other costs for the design, construction, and equipping of the veterans cemetery.

(2) Any moneys received from the State Veterans Cemetery Grant Program that are transferred to the Endowment Fund for the reimbursement of the costs specified in paragraph (1) may be used by the department to reimburse any cash advances made to the Endowment Fund used for those costs to the extent allowed by grant requirements, once it is determined by the California Department of Veterans Affairs and certified by the Controller's office that sufficient funds remain in the Endowment Fund to cover ongoing *operations and maintenance* ~~and operating~~ costs.

(3) (A) If the Secretary of Veterans Affairs or the department fails to submit a grant application as described in paragraph (1) of subdivision (b) to the United States Department of Veterans Affairs State Veterans Cemetery Grant Program, the United States Department of Veterans Affairs denies the grant application, or if the grant funding pursuant to the United States Department of Veterans Affairs State Veterans Cemetery Grant Program is not received for any other reason, any amounts donated to, received by, or deposited to the Endowment Fund by the entities described in subdivision (c) of Section 1451 shall be refunded by the Controller to those entities, and that amount is hereby appropriated from that fund the purpose of making those refunds.

(B) Any amounts remaining in the Endowment Fund after making the refunds described in subparagraph (A), if any, shall be transferred to the General Fund.

(C) The Controller shall make the refunds to the entities, including the Central Coast Veterans Cemetery Foundation, pursuant to subparagraph (A) within six months from the date of

1 the announcement or receipt of the grant funding denial notification
2 or any other equivalent notification that the project will be unable
3 to secure the grant funds and proceed to construction. Any transfer
4 to the General Fund pursuant to subparagraph (B) shall also be
5 made within that six month period.

6 *SEC. 5. Section 1454 of the Military and Veterans Code is*
7 *amended to read:*

8 1454. (a) The Central Coast Veterans Cemetery Master
9 Development Fund is hereby renamed the California Central Coast
10 State Veterans Cemetery at Fort Ord Operations Fund. Moneys in
11 the Operations Fund may be transferred, upon appropriation by
12 the Legislature, from the Endowment Fund to the Operations Fund
13 for expenditure by the department, solely for the annual
14 ~~administrative and oversight~~ *operations and maintenance* costs of
15 the veterans cemetery.

16 (b) (1) The Controller shall reserve an amount, not to exceed
17 20 percent of the amount allocated pursuant to subdivision (a), in
18 the Operations Fund, which shall be used solely as a reserve for
19 unforeseen ~~administrative and oversight~~ *operations and*
20 *maintenance* costs.

21 (2) For purposes of this subdivision, “unforeseen ~~administrative~~
22 ~~and oversight~~ *operations and maintenance* costs” means any costs
23 that could not have been reasonably anticipated by the department
24 when preparing its estimate of annual ~~administrative and oversight~~
25 *operations and maintenance* costs and that are needed to carry out
26 the purposes of this chapter.

27 *SEC. 6. Section 1456 of the Military and Veterans Code is*
28 *amended to read:*

29 1456. (a) Proposals for the construction, placement, or donation
30 of monuments or memorials, excluding headstones, and other
31 amenities to the veterans cemetery shall be subject to review by
32 the California Central Coast Veterans Cemetery Advisory
33 Committee.

34 (b) All proposals for the construction, placement, or donation
35 of monuments, memorials, and amenities to the veterans cemetery
36 shall be subject to the approval of the Secretary of Veterans Affairs.

37 (c) The department shall adopt regulations for the policies and
38 procedures to be followed with respect to the design, placement,
39 and approval of monuments and memorials proposed to be placed
40 on veterans cemetery grounds.

(d) Endowment Fund balances exceeding that determined to be sufficient to meet annual ~~administrative and oversight operations~~ *and maintenance* costs, as determined pursuant to Section 1453, may be expended, upon appropriation by the Legislature, for the purpose of establishing monuments, memorials, and amenities.

SEC. 7. Item 8955-011-0001 of Section 2.00 of the Budget Act of 2013 is repealed.

~~8955-011-0001—For transfer by the Controller, upon the order of the Director of Finance, to the California Central Coast State Veterans Cemetery at Fort Ord Endowment Fund....~~ (1,500,000)

~~Provisions:~~

- ~~1. The Director of Finance may transfer up to \$1,500,000 as a loan from the General Fund to the California Central Coast State Veterans Cemetery at Fort Ord Endowment Fund. The Director of Finance shall order the repayment of all or a portion of this loan if he or she determines that there is no longer a need for the moneys in the fund that received the loan. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.~~
- ~~2. Funds shall be repaid to the full extent of the grant award no later than 24 months after construction is completed.~~
- ~~3. The Secretary of Veterans Affairs shall report annually, by January 10 of each year, commencing January 10, 2015, to the Director of Finance, the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the fiscal committees of each house of the Legislature on all expenditures made pursuant to Provision 1, including progress on repaying the General Fund pursuant to Provision 2.~~

SEC. 8. (a) The amount of one million dollars (\$1,000,000) is hereby appropriated from the General Fund to the California Central Coast State Veterans Cemetery at Fort Ord Endowment Fund for the construction of the California Central Coast State Veterans Cemetery at Fort Ord.

1 (b) *The Secretary of Veterans Affairs shall report annually, by*
2 *January 10 of each year, commencing January 10, 2015, to the*
3 *Director of Finance, the Chairperson of the Joint Legislative*
4 *Budget Committee, and the chairpersons of the fiscal committees*
5 *of each house of the Legislature on all expenditures made pursuant*
6 *to subdivision (a).*

7 ~~SECTION 1. Section 1071 of the Labor Code is amended to~~
8 ~~read:~~

9 ~~1071. The following definitions apply throughout this chapter:~~

10 ~~(a) “Awarding authority” means any state or local government~~
11 ~~agency, including, but not limited to, any city, county, special~~
12 ~~district, transit district, joint powers authority, or nonprofit~~
13 ~~corporation that awards or otherwise enters into contracts for public~~
14 ~~transit services performed within the state.~~

15 ~~(b) “Bidder” means any person who submits a bid to an~~
16 ~~awarding agency for a public transit service contract or subcontract.~~

17 ~~(c) “Contractor” means any person who enters into a public~~
18 ~~transit service contract with an awarding authority.~~

19 ~~(d) “Employee” means any person who works for a contractor~~
20 ~~or subcontractor under a contract. “Employee” does not include~~
21 ~~an executive, administrative, or professional employee exempt~~
22 ~~from the payment of overtime compensation within the meaning~~
23 ~~of subdivision (a) of Section 515 or any person who is not an~~
24 ~~“employee” as defined under Section 2(3) of the National Labor~~
25 ~~Relations Act (29 U.S.C. Sec. 152(3)).~~

26 ~~(e) “Person” means any individual, proprietorship, partnership,~~
27 ~~joint venture, corporation, limited liability company, trust,~~
28 ~~association, or other entity that may employ individuals or enter~~
29 ~~into contracts.~~

30 ~~(f) “Public transit services” means the provision of passenger~~
31 ~~transportation services to the general public, including paratransit~~
32 ~~service.~~

33 ~~(g) “Service contract” means any contract the principal purpose~~
34 ~~of which is to provide public transit services through the use of~~
35 ~~service employees.~~

36 ~~(h) “Subcontractor” means any person who is not an employee~~
37 ~~who enters into a contract with a contractor to assist the contractor~~
38 ~~in performing a service contract.~~

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